

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE: EAST PALESTINE TRAIN
DERAILMENT

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CASE NO. 4:23-CV-00242

JUDGE BENITA Y. PEARSON

**THIRD-PARTY DEFENDANT OXYVINYLS LP'S MOTION FOR A RULING
REGARDING ITS OBJECTIONS TO DEPOSITION DESIGNATIONS**

Pursuant to Local Rule 32.1(b)(17) and Third-Party Defendant OxyVinyls LP's ("OxyVinyls") objections that were exchanged with the other parties,¹ OxyVinyls seeks a ruling by the Court regarding the admissibility of certain deposition designations noticed by Third-Party Plaintiffs Norfolk Southern Railway Company and Norfolk Southern Corporation (together, Norfolk Southern) and/or Third-Party Defendant GATX Corporation ("GATX"). OxyVinyls objects to Norfolk Southern and/or GATX's depositions designations, counter designations, and counter-counter designations on the following grounds:

¹ On March 3, 2025, the parties exchanged objections regarding their initial deposition designations, on March 18, 2025, they exchanged objections regarding counter designations, and on March 25, 2025, they exchanged objections regarding counter-counter designations.

1. Deposition of Kandy Beckner – January 21, 2024

Page/Line Designations	Designation Type	Objections
95:15-95:23	Initial	Hearsay; relevance <ul style="list-style-type: none"> • Testimony asks about language from the New Jersey fact sheet on vinyl chloride monomer. Testimony regarding contents of the document to prove truth of matter asserted in its contents is hearsay. Fed. R. Evid. 801. Further, the witness did not rely upon it to create OxyVinyls' Safety Data Sheet ("SDS"). She states only that it contains similar information as sources she did use. Fed. R. Evid. 401.
103:21-104:7	Initial	Relevance <ul style="list-style-type: none"> • The witness was not involved in the derailment or the response to it. Testimony does not make fact more or less probable and answer is not of consequence in determining the action. Fed. R. Evid. 401.

2. Deposition of John Brenon – January 19, 2024

Page/Line Designations	Designation Type	Objections
57:21-58:3	Counter-counter	Not necessary for completeness <ul style="list-style-type: none"> • Counter-counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the counter designation.²
59:4-59:18	Counter-counter	Not necessary for completeness <ul style="list-style-type: none"> • Counter-counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the counter designation.
64:9-16	Counter-counter	Not necessary for completeness <ul style="list-style-type: none"> • Counter-counter designation is not necessary for context or to eliminate misleading impression

² The rule of completeness allows the admission of additional deposition testimony that "in fairness should be included with the part introduced." Fed. R. Civ. P. 32(a)(6); *see also* Fed. R. Evid. 106 ("If a party introduces all or part of a statement, an adverse party may require the introduction, at that time, of any other part — or any other statement — that in fairness ought to be considered at the same time. The adverse party may do so over a hearsay objection."); *United States v. Costner*, 684 F.2d 370, 373 (6th Cir. 1982) ("Rule 106 is intended to eliminate the misleading impression created by taking a statement out of context.").

		because it relates to a different topic than the counter designation.
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3. Deposition of William Carroll, Jr., Ph.D. – January 30, 2024

Page/Line Designations	Designation Type	Objections
9:18-161:24	Initial	Relevance; prejudice; Federal Rule of Civil Procedure 26(a)(2)(b); Federal Rules of Evidence 602, 701(c) and 702. <ul style="list-style-type: none"> This objection is to the entirety of the witness's testimony. OxyVinyls moved in limine to exclude Dr. Carroll as a trial witness because he does not have relevant personal knowledge and was not disclosed as an expert witness. (ECF No. 823.)
78:25-79:12	Initial	Assumes facts not in evidence; incomplete hypothetical. <ul style="list-style-type: none"> This line of questions involves an incomplete hypothetical and seeks testimony from Dr. Carroll regarding his opinion. Dr. Carroll is not qualified to offer testimony regarding the risk of polymerization as he is a lay witness and that testimony would be based on scientific, technical and, or other specialized knowledge within the scope of Rule 702, which is improper pursuant to Rule 701(c).
81:15-82:23	Initial	Foundation; incomplete hypothetical. <ul style="list-style-type: none"> This witness was not involved in the derailment or the response to it and thus cannot offer an opinion regarding anything done at the derailment site. He is a lay witness, and such an opinion would not be based on anything he witnessed at the derailment because he was not involved and further it would be based on scientific, technical, or specialized knowledge within the scope of Rule 702, which is improper pursuant to Rule 701(c).
103:19-24	Initial	Foundation. <ul style="list-style-type: none"> This line of questions is beyond the knowledge of Dr. Carroll as he has never drafted an SDS and was not involved in the creation of OxyVinyls' SDS. Preceding non-designated testimony confirms that he does not have an understanding of whom is the target audience of an SDS (see 102:20-24).
150:23-151:7	Initial	Form; prejudice. <ul style="list-style-type: none"> No foundation is laid to establish Dr. Carroll's experience working with or around VCM or that he has a familiarity with the reactivity of VCM. This question seeks an opinion from Dr. Carroll which is based on scientific, technical, or other specialized

		knowledge within the scope of Rule 702, which is improper under Rule 701(c).
115:16-116:22	Counter-counter	Not necessary for completeness; foundation; omits question; mischaracterizes the testimony; misleading <ul style="list-style-type: none"> Counter designations relate to witness's lack of involvement in constructing a safety data sheet and scientific evidence reviewed to understand terms used in OxyVinyls' SDS. Counter-counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the counter designation.

4. Deposition of Chip Day – January 16, 2024

Page/Line Designations	Designation Type	Objections
52:17-53:17	Counter	Non-responsive answers
62:10-13	Counter	Leading
70:6-10	Counter	Leading
147:4-148:6	Counter	Not necessary for completeness; outside the scope; hearsay <ul style="list-style-type: none"> Counter- designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
158:10-19	Counter	Hearsay <ul style="list-style-type: none"> Offering out-of-court statement for truth of matter asserted regarding PRD activity. Fed. R. Evid. 801.
164:8-12	Counter	Non-responsive answers; leading
182:14-183:5	Counter	Hearsay; irrelevant; prejudicial <ul style="list-style-type: none"> Witness identified Dr. Carroll as a potential expert and testified regarding statements that he made that were not based on Dr. Carroll's personal knowledge.
184:12-184:19	Counter	Non-responsive answer; hearsay
190:6-16	Counter	Hearsay
205:1-7	Counter	Hearsay; irrelevant; prejudicial <ul style="list-style-type: none"> Witness testified as to statement made by Dr. Carroll, who was not testifying as a representative of Oxy Vinyls, regarding statements that Dr. Carroll made outside of his personal knowledge.
208:1-5	Counter	Leading
285:23-286:5	Counter	Not necessary for completeness; outside the scope; leading

		<ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
437:14-438:4	Counter	<p>Not necessary for completeness; outside the scope</p> <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
438:20-439:1	Counter	<p>Not necessary for completeness; outside the scope; hearsay</p> <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.

5. Deposition of Ronald Scott Deutsch – December 4, 2023

Page/Line Designations	Designation Type	Objections
9:3-9:5	Counter	<p>Not necessary for completeness</p> <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
19:15-19:25 20:7-20:22 21:6-21:12	Counter	<p>Not necessary for completeness</p> <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
23:3-23:12	Counter	<p>Not necessary for completeness</p> <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.

6. Deposition of Mark Dudle – November 30, 2023

Page/Line Designations	Designation Type	Objections
33:21-34:1 34:3-34:4	Counter	<p>Not necessary for completeness</p> <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
89:11-89:23	Counter	<p>Not necessary for completeness; irrelevant</p> <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation..

7. Deposition of Scott Gould – December 12, 2023

Page/Line Designations	Designation Type	Objections
38:12-38:16 40:21-40:23 41:17-41:20	Counter	Not necessary for completeness <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
33:25-34:6 34:11-34:15	Counter	Not necessary for completeness <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
43:13-43:16	Counter	Hearsay <ul style="list-style-type: none"> Testimony relates to what the NTSB determined and admitted for truth of matter asserted. Fed. R. Evid. 801.
65:23-66:15 66:19-67:12	Counter	Not necessary for completeness; irrelevant; Rule 403 <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation. Also relates to environmental remediation efforts, which have been excluded. (ECF No. 817).
96:23-97:12 109:15-109:22	Counter	Not necessary for completeness <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
97:10-97:12	Counter	Hearsay <ul style="list-style-type: none"> Witness testifying that heat could cause polymerization because advised by unknown person of that fact.
121:1-121:11	Counter	Not necessary for completeness <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
259:8-259:14	Counter	Not necessary for completeness; hearsay <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation..

8. Deposition of Helen Hart – February 5, 2024

Page/Line Designation	Designation Type	Objections
49:15-49:17	Counter	Not necessary for completeness

49:19-50:2		<ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
74:10-74:20	Counter	<p>Not necessary for completeness</p> <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
96:6-96:9 96:12-97:7	Counter	<p>Not necessary for completeness</p> <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
99:2-99:5 99:8-99-19	Counter	<p>Not necessary for completeness</p> <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
101:19- 101:22 102:1-102:2	Counter	<p>Not necessary for completeness</p> <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
105:21-106:7 106:10- 106:24	Counter	<p>Not necessary for completeness</p> <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
112:4-112:10 112:13- 112:16	Counter	<p>Not necessary for completeness</p> <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
113:9-113:15	Counter	<p>Not necessary for completeness</p> <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
120:14- 120:21 120:24-121:9	Counter	<p>Not necessary for completeness</p> <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
169:9-169:15 169:17- 169:24	Counter	<p>Not necessary for completeness</p> <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
251:19-253:6 251:19- 253:18	Counter	<p>Not necessary for completeness; hearsay; speculation</p> <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation. Counter designation relates to conversation that

		another employee had with someone at OxyVinyls that was told to the witness.
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9. Deposition of Jennifer Hostetler – January 23, 2024

Page/Line Designations	Designation Type	Objections
70:1-70:6 70:9-70:23 71:5-71:8	Counter	Not necessary for completeness; irrelevant <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
76:11-76:11 76:15-76:16	Counter	Not necessary for completeness; irrelevant; non-responsive answer <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
99:7-99:9	Counter	Not necessary for completeness; irrelevant <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
104:23- 105:12	Counter	Not necessary for completeness; irrelevant; non-responsive answer <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation. Testimony relates to witness asking for rephrasing of questions.

10. Deposition of Tim Kelly – February 7, 2024

Page/Line Designations	Designation Type	Objections
23:1-11	Initial	Vague; misstates prior testimony. <ul style="list-style-type: none"> Immediately preceding testimony relates to safety and emergency response regulations, while the scope of these questions was not limited to those topics.
18:12-17	Counter-counter	Not necessary for completeness <ul style="list-style-type: none"> Counter-counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the counter designation.
92:17 – 93:4, 93:6	Counter-counter	Not necessary for completeness <ul style="list-style-type: none"> Counter-counter designation is not necessary for context or to eliminate misleading impression

		because it relates to a different topic than the counter designation..
104:23 – 105:7, 105:9	Counter-counter	Not necessary for completeness <ul style="list-style-type: none"> Counter-counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the counter designation.

11. Deposition of Drew McCarty – January 24, 2024

Page/Line Designations	Designation Type	Objections
64:18	Counter	Not necessary for completeness; leading <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
158:9-159:15	Counter	Not necessary for completeness; non-responsive answers <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
169:14-23	Counter	Not necessary for completeness <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
176:12-177:4	Counter	Not necessary for completeness <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
177:16-177:24	Counter	Not necessary for completeness <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
180:2-17	Counter	Not necessary for completeness <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
215:24-216:12	Counter	Not necessary for completeness; non-responsive answers <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
218:6-219:1	Counter	Not necessary for completeness <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.

220:15-221:9	Counter	Not necessary for completeness; hearsay <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation. Testimony relates to what someone else said. Fed. R. Evid. 801.
223:5-224:21	Counter	Not necessary for completeness <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
225:12-20	Counter	Not necessary for completeness <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
242:5-20	Counter	Hearsay; non-responsive answers <ul style="list-style-type: none"> Testifying regarding what his employees told him and offering testimony for truth of matter asserted regarding the temperature readings. Fed. R. Evid. 801.
245:21-246:8	Counter	Hearsay; answer based on hearsay <ul style="list-style-type: none"> Testifying regarding what his employees told him and offering testimony for truth of matter asserted regarding the temperature readings. Fed. R. Evid. 801.
252:10-253:3	Counter	Hearsay; answer based on hearsay <ul style="list-style-type: none"> Testifying regarding what his employees told him and offering testimony for truth of matter asserted regarding the temperature readings. Fed. R. Evid. 801.
314:4-15	Counter	Not necessary for completeness; duplicative <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
404:25-405:18	Counter	Not necessary for completeness <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
406:2-11	Counter	Not necessary for completeness <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.

12. Deposition of Drew McCarty – January 25, 2024

Page/Line Designations	Designation Type	Objections
567:13-568:13	Counter	Hearsay <ul style="list-style-type: none"> • Witness testifying as to information provided to him from others regarding temperature data for truth of matter asserted that temperature data was unreliable. Fed. R. Evid. 801.
609:6-610:16	Counter	Answers based on hearsay <ul style="list-style-type: none"> • Witness testifying as to information provided to him from others regarding temperature data for truth of matter asserted that temperature data was unreliable. Fed. R. Evid. 801.

13. Deposition of William Jason Poe – January 30, 2024

Page/Line Designations	Designation Type	Objections
58:14-20	Counter	Hearsay <ul style="list-style-type: none"> • Witness testifying as to out of court statement from Chip Day to prove truth of matter asserted. Fed. R. Evid. 801.
59:2-60:23	Counter	Hearsay <ul style="list-style-type: none"> • Witness testifying as to out of court statement from Chip Day to prove truth of matter asserted. Fed. R. Evid. 801.
67:22-68:1	Counter	Not necessary for completeness; irrelevant <ul style="list-style-type: none"> • Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation. Testimony is whether witness flies commercially when he travels for explosives work.
72:1-7	Counter	Answer based on hearsay <ul style="list-style-type: none"> • Witness testifying as to out of court statement regarding if a response decision had been made yet to prove truth of matter asserted. Fed. R. Evid. 801.
63:9-64:7	Counter-counter	Not necessary for completeness; leading; mischaracterization of the evidence <ul style="list-style-type: none"> • Counter-counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the counter designation.

14. Deposition of Terry Rockwell – January 31, 2024

Page/Line Designations	Designation Type	Objections
47:12-47:19	Counter	Not necessary for completeness <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
62:15-62:25 63:2-63:5	Counter	Not necessary for completeness; hearsay <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation. Testimony relates to what he discussed would be his next steps following the vent and burn. Fed. R. Evid. 801.
86:21-87:12	Counter	Not necessary for completeness <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
100:22-101:9 102:10-102:13	Counter	Not necessary for completeness <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
162:3-162:8	Counter	Not necessary for completeness <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
173:22-174:1 174:12-174:13 174:15-174:20 174:22-175:1	Counter	Not necessary for completeness; speculation <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.

15. Deposition of David Schoendorfer – February 2, 2024

Page/Line Designations	Designation Type	Objections
41:1-4; 41:6-24	Initial	Relevance; prejudice. <ul style="list-style-type: none"> Norfolk Southern's damages are limited to the monies it agreed to pay as part of the class settlement; not entitled to seek damages for anything else. Introducing evidence of alleged contributions outside of the amount Norfolk Southern agreed to pay as part of the class settlement would prejudice OxyVinyls' defense. (ECF No. 817).

60:19-22; 60:25-61:4	Initial	Relevance; prejudice. <ul style="list-style-type: none"> Norfolk Southern's damages are limited to the monies it agreed to pay as part of the class settlement; not entitled to seek damages for anything else. Introducing evidence of alleged contributions outside of the amount Norfolk Southern agreed to pay as part of the class settlement would prejudice OxyVinyls' defense. (ECF No. 817).
97:3-14	Initial	Relevance; prejudice. <ul style="list-style-type: none"> Norfolk Southern's damages are limited to the monies it agreed to pay as part of the class settlement; not entitled to seek damages for anything else. Introducing evidence of alleged contributions outside of the amount Norfolk Southern agreed to pay as part of the class settlement would prejudice OxyVinyls' defense. (ECF No. 871).
48:10-48:13 48:20-48:24 49:7-49:15	Counter	Not necessary for completeness <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
60:19-60:22 60:25-61:4	Counter	Not necessary for completeness <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
268:17- 269:21	Counter	Not necessary for completeness <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
270:1-271:14	Counter	Not necessary for completeness <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
271:16-272:6	Counter	Not necessary for completeness; hearsay; speculation <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation. Testimony relates to conversation he had with another Norfolk Southern employee.

16. Deposition of Alan Shaw – November 13, 2023

Page/Line Designations	Designation Type	Objections
176:20-177:5	Counter	Not necessary for completeness

		<ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
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17. Deposition of Jon Simpson – December 12, 2023

Page/Line Designations	Designation Type	Objections
37:19-38:3	Counter	Not necessary for completeness <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
49:9-49:15	Counter	Speculation
50:18-52:1	Counter	Not necessary for completeness <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
56:11-56:20	Counter	Not necessary for completeness <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
72:17-73:24 74:7-74:11 74:15-74:19	Counter	Not necessary for completeness <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
89:7-89:12	Counter	Not necessary for completeness <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
118:21-119:6	Counter	Not necessary for completeness <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
187:8-188:17 188:23-189:21	Counter	Not necessary for completeness <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
250:14-250:24 251:7-251:20	Counter	Not necessary for completeness <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.

18. Deposition of Joey Smith – January 17, 2024

Page/Line Designations	Designation Type	Objections
27:19-27:20; 27:22-27:25	Initial	Speculation; lack of foundation. <ul style="list-style-type: none"> This question requires Mr. Smith to speculate on what it means to his employer, Oxy, that SPSI is a Chlorine Institute approved contractor. Counsel laid no foundation that would provide a basis for Mr. Smith to answer on behalf of Oxy.
28:1-28:2; 28:4-28:6; 28:8-28:20	Initial	Speculation; lack of foundation. <ul style="list-style-type: none"> This question requires Mr. Smith to speculate on whether his employer, Oxy, would engage SPSI based on its status as a Chlorine Institute approved contractor. Counsel laid no foundation that would provide a basis for Mr. Smith to answer on behalf of Oxy.
41:19-42:5	Initial	Relevance. <ul style="list-style-type: none"> This line of questions involves polymerization reactions being performed at OxyVinyls' facilities, which topic is not relevant to the circumstances at the scene of the derailment.
94:20-94:22; 94:24-95:2	Initial	Argumentative; assumes a fact not in evidence. <ul style="list-style-type: none"> The question characterizes the operation of the PRD as "abnormal" without a factual basis to do so.
114:15- 114:20; 114:22- 115:4; 115:25- 116:16; 116:18- 116:24	Initial	Hearsay; lack of foundation; relevance. <ul style="list-style-type: none"> This testimony relates to Exhibit 15, which is an email exchange that Mr. Smith was not a part of. The email constitutes hearsay, and no foundation is laid to establish Mr. Smith's ability to testify as to its contents. These internal discussions of Oxy personnel are also not relevant to the circumstances and decisions being made at the scene of the derailment.
35:9-11, 35:13	Counter-counter	Mischaracterizes the testimony; misleading <ul style="list-style-type: none"> Counter designations relate to witness's familiarity with safety and industrial hygiene aspects of vinyl chloride monomer. Counter-counter designations mischaracterize witness's testimony that he believes there is a distinction "inside" as opposed to "outside" the fence when he testified as to the extent of his understanding.
111:12-25, 112:2	Counter-counter	Not necessary for completeness <ul style="list-style-type: none"> Counter designations designation is not necessary for context or to eliminate misleading impression

		because it relates to a different topic than the counter designation.
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19. Deposition of Steve Smith – December 6, 2023

Page/Line Designations	Designation Type	Objections
104:10-16; 233:2-4; 233:9-12; 233:18-20; 234:9-10; 234:23-25; 235:9-11; 235:17-20; 246:17-19	Initial	Relevance; prejudice. <ul style="list-style-type: none"> Relate to OxyVinyls' objections on the basis of attorney-client privilege and instructions not to disclose the substance of communications protected by attorney-client privilege. OxyVinyls' assertions of privilege that Norfolk Southern did not challenge with the Court are not relevant to Norfolk Southern's claims against OxyVinyls. Fed. R. Evid. 401; Fed. R. Evid. 501. Mr. Smith answers counsel's questions after the attorney-client objections are lodged. Allowing the attorney-client privilege objections and counsel's instructions to the witness to be read to the jury may cause undue prejudice to OxyVinyls. The probative value of the testimony (if any) is substantially outweighed by a danger of unfair prejudice. Fed. R. Evid. 403.
216:4-216:20	Initial	Relevance. <ul style="list-style-type: none"> These questions ask about the thermal wells in spherical tanks where VCM is stored on site at OxyVinyls' facilities that is not at issue for the VCM railcars at issue in this matter. Fed. R. Evid. 401.

20. Deposition of Karenanne Stegmann – January 5, 2024

Page/Line Designations	Designation Type	Objections
85:6-85:16; 86:5-87:14	Initial	Foundation; hearsay; speculation. <ul style="list-style-type: none"> Ms Stegmann was not a sender nor recipient of the email between Mss. Glass and Achimasi. When asked about this exchange between Mss. Achimasi and Glass, Ms. Stegmann testified: "Was I aware of this email at this time? No." (Stegmann Dep. 86:16-17) (emphasis added). As such, questions about the email exchange between Mss. Achimasi and Glass constitutes hearsay, hearsay within hearsay, and no foundation was laid to establish its admissibility. The questions require Ms. Stegmann

		to speculate about the thoughts and discussions of others
136:14-136:15; 137:8-138:4; 191:9-192:7	Initial	<p>Relevance; prejudice; juror confusion.</p> <ul style="list-style-type: none"> The fact that the document was sent to the NTSB is not relevant to the claims before the Court. The content of OxyVinyls submission to the NTSB is also not relevant to the claims before the Court. Allowing testimony that OxyVinyls presented Exhibit 11 to the NTSB may cause the fact finder to give more weight to the document than is due. The probative value of the testimony (if any) is substantially outweighed by a danger of unfair prejudice, misleading the jury and confusing the issues. Fed. R. Evid. 403.
174:23-175:6; 176:17-19; 177:12-19	Initial	<p>Hearsay; relevance; foundation.</p> <ul style="list-style-type: none"> The NTSB prepared Exhibit 16 as part of its investigation into the East Palestine derailment. OxyVinyls did not prepare this document. Exhibit 16 purports to be notes of an April 5, 2023 video conference that the NTSB had with Dr. Carroll after the derailment. The notes themselves are hearsay, and Dr. Carroll's purported statements that are noted in the document are also hearsay. Documents prepared by the NTSB are not relevant to the claims before the Court. Ms. Stegmann did not author this document. Foundation was not established for Ms. Stegmann to answer question about its contents.
196:21-197:5	Initial	<p>Hearsay; speculation.</p> <ul style="list-style-type: none"> This question requires Ms. Stegmann to speculate on discussions of others internally at OxyVinyls. It also asks Ms. Stegmann to speculate as to whether a third-party (The Chlorine Institute) will be modifying one of its publications in the future.
198:21-199:10; 200:12-21	Initial	<p>Foundation.</p> <ul style="list-style-type: none"> Asked witness questions regarding document that she testified she had not seen before and beyond her role.

21. Deposition of OxyVinyls' Rule 30(b)(6) Witness (Paul Thomas) - February 2, 2024

Page/Line Designations	Designation Type	Objections
10:20-11:2; 11:8-11:11; 11:21-12:16; 15:6-21; 16:10-20; 17:25-18:9; 19:8-16; 20:9-18; 21:6-14; 21:22-22:7; 23:3-10	Initial	Relevance; confusion; prejudice. <ul style="list-style-type: none"> The fact that certain topics were noticed for deposition by Norfolk Southern does not mean that they are relevant to the claims being tried and may cause juror confusion. OxyVinyls may be prejudiced by the manner in which the topics in the notice were phrased by Norfolk Southern. OxyVinyls may also be prejudiced by references to certain statutes and regulations, which may suggest to jurors that OxyVinyls failed to comply with the statutes or regulations. The probative value of the testimony (if any) is substantially outweighed by a danger of unfair prejudice, misleading the jury and confusing the issues. Fed. R. Evid. 403.
61:19-23	Initial	Relevance. <ul style="list-style-type: none"> Testimony is asking witness whether he needs to take a break given that he had been testifying for an hour and a half. Testimony is irrelevant to claims at issue. Fed. R. Evid. 401.

22. Deposition of Paul Thomas – December 5, 2023

Page/Line Designations	Designation Type	Objections
222:20-223:4	Initial	Relevance; prejudice. <ul style="list-style-type: none"> Testimony relates to subsequent remedial measures and is the subject of a motion in limine. (ECF No. 821.) Further, the answer opens the door to the NTSB findings that are not relevant or admissible.
252:22-253:12	Initial	Relevance; prejudice; legal conclusion or legal issue. <ul style="list-style-type: none"> Non-testimony. Designation goes to discussion among counsel regarding ceding time. This is colloquy between lawyers regarding deposition time, a legal issue that was already decided by the Court and should not be introduced to the jury

23. Deposition of Alex Torres – December 19, 2023

Page/Line Designation	Designation Type	Objections
157:17-23	Initial	Foundation; speculation. <ul style="list-style-type: none"> The questioner did not establish that Mr. Torres was privy to Norfolk Southern's decision-making process when it came to deciding whether to re-rail TILX402025.

24. Deposition of John Tummons – December 7, 2023

Page/Line Designations	Designation Type	Objections
24:15-25:25	Initial	Speculation; lack of foundation. <ul style="list-style-type: none"> Testimony relates to witness's lack of knowledge on topic and declining to speculate.
145:6-147:9	Initial	Relevance; prejudice. <ul style="list-style-type: none"> Testimony relates to issue of aluminum in railcars which was the subject of claim that has been dismissed against OxyVinyls. (Mem. of Op. & Order, ECF No. 783, at PageID #58590-91 (dismissing Count One).) There is no claim that the vent and burn was conducted because of concerns about polymerization due to aluminum, and injecting this issue is unduly prejudicial. Fed. R. Evid. 403.

25. Deposition of Paul Williams – December 7, 2023

Page/Line Designations	Designation Type	Objections
76:9-77:4 76:15-77:8	Counter	Not necessary for completeness <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
139:18-140:9 141:4-141:17	Counter	Not necessary for completeness <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
150:12-150:18	Counter	Not necessary for completeness <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.

26. Deposition of Robert Wood – February 27, 2024

Page/Line Designations	Designation Type	Objections
78:15-80:15	Counter	Not necessary for completeness; outside the scope; hearsay <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation. Witness is recounting conversation with Ms. Achimasi. Fed. R. Evid. 801.
81:6-82:24	Counter	Not necessary for completeness; outside the scope; hearsay <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation. Witness is recounting conversation with Ms. Achimasi. Fed. R. Evid. 801.
115:3-22	Counter	Not necessary for completeness; outside the scope; prejudicial; speculation <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
117:17-119:18	Counter	Not necessary for completeness; outside the scope; hearsay <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation. Witness is recounting conversation with others. Fed. R. Evid. 801.
137:8-19	Counter	Non-responsive answers

27. Deposition of Robert Wood – December 11, 2024

Page/Line Designations	Designation Type	Objections
44:11-19	Counter	Not necessary for completeness; outside the scope; non-responsive answer <ul style="list-style-type: none"> Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
109:21-110:21	Counter	Hearsay; foundation
129:3-21	Counter	Non-responsive answer
166:21-167:9	Counter	Hearsay

		<ul style="list-style-type: none"> • Witness did not take temperature readings himself but offering information from others for truth of matter asserted. Fed. R. Evid. 801.
177:11-24	Counter	<p>Not necessary for completeness; outside the scope</p> <ul style="list-style-type: none"> • Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
275:6-25	Counter	<p>Not necessary for completeness; outside the scope</p> <ul style="list-style-type: none"> • Counter designation is not necessary for context or to eliminate misleading impression because it relates to a different topic than the initial designation.
277:21-278:4	Counter	<p>Hearsay</p> <ul style="list-style-type: none"> • Witness relaying what others told him. Fed. R. Evid. 801.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was served by email on all parties and/or counsel of record on March 28, 2025.

s/ Kimberly Weber Herlihy

Kimberly Weber Herlihy